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ODYSSEY HEALTHCARE GP, LLC

DISCOVERY MATTER

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHARLIA CORNISH, an individual  
and an “aggrieved employee” under  
the California Labor Code Private  
Attorney General Act, on her own  
behalf and on behalf of all others  
similarly situated,

Plaintiff,

v.

ODYSSEY HEALTHCARE, INC., a  
Delaware corporation; and DOES 1  
through 100, inclusive,

Defendants.

Case No. CV09-00014 GHK (JCx)

**STIPULATED PROTECTIVE ORDER  
REGARDING CONFIDENTIAL  
DISCOVERY MATERIAL**

**[CHANGES MADE BY COURT IN  
BOLD]**

Date Action Filed: November 6, 2008

1 Subject to the approval of this Court, the parties hereby stipulate to the following  
2 protective order:

3 1. Any and all documents comprising, generated from, or referencing  
4 processes, operations, business methods, or any other business information that is  
5 proprietary and/or confidential (including financial information or trade secrets) of  
6 Defendant Odyssey HealthCare GP, LLC (“Defendant”), any of its parent, subsidiary, or  
7 affiliated entities, including but not limited to Odyssey HealthCare, Inc., or their  
8 employees, customers, or vendors, shall be deemed Confidential.

9 2. Confidential documents shall be so designated by stamping copies of the  
10 documents with the legend “CONFIDENTIAL.” All pages shall be so labeled. If either  
11 party, through inadvertence, fails to designate discovery material as Confidential, but  
12 thereafter determines that such discovery material should have been so designated, it  
13 promptly will provide written notice of the Confidential designation and to the extent  
14 practicable the discovery material will be treated as Confidential Material from the date  
15 of receipt of such notice. Likewise, if a party designates discovery material  
16 Confidential and later determines that such discovery material should not have been so  
17 designated, it will promptly provide written notice of the removal of the designation  
18 along with a duplicate copy of the discovery material without the Confidential marking.  
19 If any party wishes to designate documents produced by a third party as Confidential, it  
20 shall do so within fourteen (14) days of receipt of such documents and notify counsel  
21 for the opposing party of such designation by producing a copy bearing the label  
22 Confidential.

23 3. Testimony taken at a **deposition** [ ] may be designated as confidential by  
24 making a statement to that effect on the record at the deposition or other proceeding.  
25 Arrangements shall be made with the court reporter taking and transcribing such  
26 proceeding to separately bind such portions of the transcript containing information  
27 designated as confidential, and to label such portions appropriately.  
28

1           4.     Material designated as confidential under this Order, the information  
 2 contained therein, and any summaries, copies, abstracts, or other documents derived in  
 3 whole or in part from material designated as confidential (hereinafter  
 4 “CONFIDENTIAL MATERIAL”) shall be used only for the purpose of the prosecution,  
 5 defense, or settlement of this action, and for no other purpose.

6           5.     CONFIDENTIAL MATERIAL produced pursuant to this Order may be  
 7 disclosed or made available only to the Court, to counsel for a party (including  
 8 paralegal, clerical, and secretarial staff employed by such counsel), to a party, and to the  
 9 “qualified persons” designated below:

- 10               (a)     court reporter(s) employed in this action;
- 11               (b)     experts or consultants (together with their clerical staff) retained by
- 12                       such counsel to assist in the prosecution, defense, or settlement of
- 13                       this action;
- 14               (c)     a witness at any deposition or other proceeding in this action;
- 15               (d)     any other person to whom the parties agree in writing;
- 16               (e)     any person, who a document, on its face, indicates has previously
- 17                       seen, or has been sent the designated information, such as authors,
- 18                       drafters, recipients and copyholders of the document or information;
- 19                       and
- 20               (f)     witnesses or prospective witnesses to the extent deemed necessary
- 21                       by counsel to prepare for or give testimony regarding facts at issue in
- 22                       this litigation, or to assist counsel in performing work in this
- 23                       litigation, but as to this category, counsel must retain physical
- 24                       custody of the “CONFIDENTIAL” document or other tangible thing
- 25                       unless consent to release is given by the party that designated it as
- 26                       “CONFIDENTIAL”.

27           Prior to receiving any CONFIDENTIAL MATERIAL, each “qualified person”  
 28 falling under any of paragraphs 5(b)-(f) above shall be provided with a copy of this

1 Order. **Disclosure to any such person shall not be made unless and until such**  
 2 **person** executes a nondisclosure agreement in the form of Attachment A, a copy of  
 3 which shall be provided forthwith to counsel for each party and to the parties.

4 6. Depositions at which CONFIDENTIAL MATERIAL is used or discussed  
 5 shall be taken only in the presence of parties, counsel for the parties, or other qualified  
 6 persons.

7 7. In the event that any party seeks to file with the Court any  
 8 CONFIDENTIAL MATERIAL, that party will **seek to** file the documents under seal  
 9 pursuant to Central District Local Rule 79-5.1, unless the parties agree in advance that  
 10 sealing is not necessary. The parties agree to meet and confer in good faith prior to the  
 11 filing of any CONFIDENTIAL MATERIAL in order to determine whether an  
 12 agreement may be reached for some or all of the documents at issue to be filed not  
 13 under seal.

14 If the parties do not agree that the documents may be filed not under seal, it shall  
 15 be the burden of the party who designated the at-issue document(s) as  
 16 “CONFIDENTIAL” to **make the requisite showing necessary to justify the filing of**  
 17 **the document(s) under seal. See Kamakana v. City and County of Honolulu, 447**  
 18 **F.3d 1172, 1178-80 (9th Cir. 2006) (discussing standards for sealing documents**  
 19 **attached to non-dispositive versus dispositive motions).**

20 If the Court refuses to uphold the confidentiality requested or accept the  
 21 document as filed under seal, the document may be filed in the public record.

22 Notwithstanding the provisions of this Paragraph 7, the party who has designated  
 23 a document as “CONFIDENTIAL” may elect, at its discretion, to file that document, or  
 24 any CONFIDENTIAL MATERIAL derived from that document, not under seal.

25 8. In the event that any CONFIDENTIAL MATERIAL is used in any court  
 26 proceeding in this action, whether filed under seal or not, it shall not lose its confidential  
 27 status through such use, and Plaintiffs shall take all reasonable steps to maintain its  
 28 confidentiality during such use.

1       The parties agree to designate information as “CONFIDENTIAL” on a good faith  
 2 basis and not for purposes of harassing the receiving party or for purposes of  
 3 unnecessarily restricting the receiving party’s access to information concerning the  
 4 lawsuit. If the party being given the documents or materials designated as  
 5 “CONFIDENTIAL” objects to said designation, then the parties will meet and confer  
 6 with respect to the designation within fifteen (15) days of receipt of such objection by  
 7 the designating party. Thereafter, if the parties are unable to reach an agreement, the  
 8 party designating the document as “CONFIDENTIAL” will file within twenty-one (21)  
 9 days of meeting and conferring a motion with the Court requesting that an Order issue  
 10 identifying the at-issue material as “CONFIDENTIAL.” Such motion shall comply  
 11 with all applicable Local Rules. If such a motion is not filed within the time period set  
 12 forth above, the “CONFIDENTIAL” designation will be deemed withdrawn for  
 13 purposes of this case. During the pendency of the Motion for Protective Order and the  
 14 meet and confer process, the “CONFIDENTIAL” designation shall remain in effect.

15       9.     This Order shall be without prejudice to the right of a party to bring before  
 16 the Court at any time the question of whether any particular document or information is  
 17 confidential or whether its use should be restricted. This Order shall not be deemed to  
 18 prejudice the parties in any way in any future application for modification of this Order.

19       10.    This Order is entered solely for purposes of facilitating the exchange of  
 20 documents and information between the parties to this action without involving the  
 21 Court unnecessarily in the process. Nothing in this Order nor the production of any  
 22 information or document under the terms of this Order nor any proceedings pursuant to  
 23 this Order shall be deemed to have the effect of an admission or waiver by Defendant or  
 24 of altering the confidentiality or non-confidentiality of any such document or  
 25 information or altering any existing obligation of any party or the absence thereof.

26       11.    In the event the Court does not execute this Order, the parties agree to meet  
 27 and confer in good faith to revise the stipulation to conform to the Court’s  
 28 specifications, if any, and submit a revised Order within fifteen (15) days of the Court’s

denial of entry of the Order. In the interim, the parties agree that this Stipulation will be binding as a contract between the parties and their respective counsel until the Court's entry of an acceptable Order.

12. This Order shall survive the termination of this action, to the extent that the information contained in CONFIDENTIAL MATERIAL is not or does not become known to the public, and the Court shall retain jurisdiction to resolve any dispute concerning the use of information disclosed hereunder. Upon termination of this case, Plaintiff's counsel shall assemble and return to counsel for Defendant all documents, material, and deposition transcripts designated as confidential and all copies of same.  
SO STIPULATED.

Dated: May \_19, 2009

AKIN GUMP STRAUSS HAUER &  
FELD LLP

By \_\_\_\_\_/s/\_\_\_\_\_  
Gary M. McLaughlin  
Attorneys for Defendant  
ODYSSEY HEALTHCARE GP, LLC

Dated: May \_19, 2009

ARIAS OZZELLO & GIGNAC, LLP

By \_\_\_\_\_/s/\_\_\_\_\_  
Mikael H. Stahle  
Attorneys for Plaintiff  
CHARLIA CORNISH

**ORDERED AND APPROVED**

Dated: June 2, 2009

By: \_\_\_\_\_/s/\_\_\_\_\_  
The Honorable Jacqueline Chooljian  
U.S. Magistrate Judge for the  
United States District Court  
Central District of California

ATTACHMENT A

ACKNOWLEDGEMENT CONCERNING INFORMATION COVERED  
BY A PROTECTIVE ORDER ENTERED IN THE  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

The undersigned hereby acknowledges that he/she has read the Stipulated Protective Order Regarding Confidential Discovery Material (“Stipulation” or “Stipulated Protective Order”) governing *Cornish v. Odyssey HealthCare, Inc., et al.*, Case No. CV09-00014 GHK (JCx), and understands its terms, agrees to be bound by each of those terms, and agrees to subject himself/herself personally to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing its terms. Specifically, and without limitation upon such terms, the undersigned agrees not to use or disclose any Confidential Material made available to it/him/her other than in accordance with the terms and conditions of this Stipulated Protective Order.

Dated: \_\_\_\_\_, 200\_\_

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name